



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

SMC

Docket No: 02997-00

2 October 2000

ET SW [REDACTED] JR USN  
[REDACTED]  
[REDACTED]

Dear Petty Officer [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

It is noted that the Navy Personnel Command (NPC) has filed in your naval record your statement dated 13 September 1999 concerning the contested performance evaluation report, together with the reporting senior's first endorsement dated 12 January 2000.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 28 September 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by NPC dated 25 June 2000, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. They were unable to find that the reporting senior placed undue emphasis on your DUI (driving under the influence) conviction, or that he used the contested performance evaluation report as punishment. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official

records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director

Enclosure



DEPARTMENT OF THE NAVY  
NAVY PERSONNEL COMMAND  
5720 INTEGRITY DRIVE  
MILLINGTON TN 38055-0000

2997-00  
1610  
PERS-311  
25 June 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: ET [REDACTED], J [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his performance evaluation report for the period 16 November 1998 to 15 November 1999.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed the report in question to be on file. It is signed by the member acknowledging the contents of the report and his right to submit a statement. The member indicated he did desire to submit a statement. The member's statement and endorsement is not on file. The member provided a copy of his statement with his petition. However, it is not suitable for filing because it was not submitted in accordance with reference (a), Annex S, paragraphs S-8 and S-9. The member has two years from the ending date of the evaluation to submit a statement.

b. The report in question is adverse and a Periodic/Regular report. The member alleges no counseling was done to support the marks and no documented evidence to support any of the false allegations. In reviewing petitions that question the exercise of the reporting senior's evaluation responsibilities, we must determine if the reporting senior abused his/her discretionary authority. For us to recommend relief, the petitioner has to show that either there is no rational support for the reporting senior's actions or that the reporting senior acted for an illegal purpose. The petitioner must do more than just assert the improper exercise of discretion, he /she must provide evidence to support the claim. I do not believe Petty Officer [REDACTED] has done so. The performance evaluation represents the opinion of the reporting senior. Nothing provided in the petition shows that the reporting senior acted for illegal or improper purposes or that the report lacked rational support. The member has provided nothing other than his own opinion.

c. The reporting senior is charged with commenting on the performance or characteristics of a member under his/her command and determines what material will be included in a performance

evaluation. The reporting senior clearly explains in the comment section of the evaluation his reason for writing the report as he did.

d. Counseling of an individual takes many forms. Whether or not Petty officer [REDACTED] was given written, verbal counseling or a Letter of Instruction (LOI) does not invalidate the performance evaluation. [REDACTED] indicated counseling did occur.

e. The member does not prove the report to be unjust or in error.

3. We recommend the member's record remain unchanged.

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
Head, Performance  
Evaluation Branch